Filed 8/22/19 Elias v. Shabtay CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ALON ELIAS, Plaintiff and Respondent, v. ISSACHAR SHABTAY, Defendant and Appellant.	B275768 Los Angeles County Super. Ct. No. EC064843

APPEAL from an order of the Superior Court of Los Angeles County, Donna Fields Goldstein, Judge. Affirmed.

Issachar Shabtay, in pro. per., for Defendant and Appellant.

Law Offices of William E. Crockett, William Crockett; Greenberg & Bass, James R. Felton, and Yi Sun Kim for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Issachar Shabtay, who is self-represented, appeals from the trial court's order denying his special motion to strike the complaint brought by plaintiff and respondent Alon Elias under Code of Civil Procedure[1] section 425.16 (anti-SLAPP statute). We conclude that Shabtay has forfeited his contentions by failing to provide a statement of facts, failing to cite to the record, and failing to articulate any pertinent or intelligible legal argument. Accordingly, we affirm the order.

FACTS AND PROCEDURAL BACKGROUND

Elias is an Orthodox rabbi and Talmudic scholar. Elias's "reputation as a scholar and as [a] man of integrity is critical to his performance as an Orthodox rabbi." That is, "any disparagement of his character could impact whether a synagogue would wish to have [Elias] serve as their rabbi." Shabtay is the "founder, President, Chair and sole Head of Operations and all Religious Services" of the Yoseff Chaim Temple.

In December 2015, Elias sued Shabtay for libel per se and intentional infliction of emotional distress. Elias alleged that in September 2015 Shabtay sent a lengthy and detailed letter to rabbis in the Orthodox Jewish community claiming that Elias was not a rabbi. Elias also alleged that in October 2015 Shabtay began posting "outrageous lies" about Elias on his Facebook page. For example, Shabtay falsely accused Elias of extorting money from the Jewish community, of not being a "real" rabbi, of having

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[1] All undesignated statutory references are to the Code of Civil Procedure.

his children and wife beg other people for money on behalf of fake institutions, and of being a thief and a liar. In addition, Shabtay posted messages on Facebook that falsely accused Elias of dishonesty, committing violence, and arranging for Israeli agents to stalk Shabtay. Elias also alleged that Shabtay "posted a [picture of a] pig's anus on Facebook referring to Rabbi Elias."

Shabtay shared the Facebook posts with 60 of his friends and other members of the Orthodox Jewish community. As a result of Shabtay's "campaign of lies," Elias was confronted by a stranger who accused him of being a liar. And due to Shabtay's "unfounded and reckless attacks" on his qualifications and personal integrity, Elias has had difficulty supporting his family and at least one synagogue advised him that it no longer wanted his services.

Shabtay moved to strike Elias's complaint under the anti-SLAPP statute, contending that Shabtay's actions arose from his right to petition or free speech and, in any event, Elias cannot establish a probability of prevailing at trial. Elias opposed the motion and filed two declarations in support of his opposition. In one of those declarations, Rabbi Zvi Block attested that Elias is a duly ordained rabbi. In Elias's declaration, he denied Shabtay's accusations. Elias also stated that he suffered severe emotional distress and was worried about supporting his family.

The court denied the motion and issued a lengthy minute order explaining why it found Shabtay had not met his initial burden of showing that the allegations in the complaint arose from protected activity. The court noted that Shabtay's oral and written statements about Elias did not involve an issue of public interest and were not made in a public forum. And although Shabtay did not meet his initial burden under section 425.16, the

court found that Elias's evidence in opposition to the motion established a probability of prevailing on the merits. The court also found that "[i]n light of the beliefs of individuals of the Orthodox Jewish faith, it is reasonable to draw an inference from [Shabtay's] use of an image of a pig's anus to refer to [Elias] that [Shabtay] was acting with malice" when he made the statements about Elias.

This appeal followed.

DISCUSSION

1. Standard of Review

In an appeal from an order denying a special motion to strike under section 425.16, the standard of review is de novo. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.) We accept the opposing party's evidence as true and evaluate the moving party's evidence only to determine if it has defeated the opposing party's evidence as a matter of law. (*Ibid.*)

2. Legal Principles Regarding the Anti-SLAPP Statute

"A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).)

Our Supreme Court has clarified the scope of the anti-SLAPP statute: "The anti-SLAPP statute does not insulate defendants from *any* liability for claims arising from the protected rights of petition or speech. It only provides a procedure for weeding out, at an early stage, *meritless* claims arising from

protected activity. Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. [Citation.] If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success. [The Supreme Court has] described this second step as a 'summary-judgment-like procedure.' [Citation.] The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law. [Citation.] '[C]laims with the requisite minimal merit may proceed.' [Citation.]" (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384–385, fn. omitted.)

3. Shabtay has failed to demonstrate error.

Our determination of the merits of this appeal is controlled by Shabtay's material noncompliance with rules of appellate practice and procedure. Accordingly, we will set forth some of the fundamental principles that guide our consideration of the issues.

"An appealed judgment or challenged ruling is presumed correct." (*Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 685.) An appellant's burden is to establish the trial court erred and then to demonstrate prejudice as the result of the error. (*Widson v. International Harvester Co.* (1984) 153 Cal.App.3d 45, 53.) An appellant also has the duty to support his challenge to the court's order with cogent argument, citations to relevant authorities, and accurate references to the record. (See

Tilbury Constructors, Inc. v. State Comp. Ins. Fund (2006) 137 Cal.App.4th 466, 482.) We are not required to examine undeveloped claims or to supply arguments for the litigants. (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52.)

Shabtay's opening (and only) brief is woefully deficient. First, his brief does not contain a statement or summary of the facts. (See Cal. Rules of Court, rule 8.204(a)(2)(C)[2] [appellant's opening brief must "[p]rovide a summary of the significant facts limited to matters in the record"].)

Second, rather than include a statement of facts, Shabtay's brief states: "The complaint does not provide a sufficient context to determine whether the alleged statements amount to opinion, and absurdly and deliberately combines the allegations of the initial complaint with unindexed and vague references to Facebook postings and letters." What then follows is a combination of legal citations, conclusory statements, as well as scattered references to the complaint, the trial court's ruling, and Elias's declaration, without a single citation to the 351-page clerk's transcript in violation of rule 8.204(a)(1)(C). It is not our function to painstakingly comb the lower court record to determine whether all or any of Shabtay's factual assertions find support in that record, or to develop his legal arguments for him. (See *Bernard v. Hartford Fire Ins. Co.* (1991) 226 Cal.App.3d 1203, 1205 ["It is the duty of a party to support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations."].)

Third, Shabtay has misrepresented the record and relied on evidence not properly before us. For instance, although Shabtay

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[2] All further rule citations are to the California Rules of Court.

contends that Elias's opposition to his motion was supported only by Elias's declaration, Elias also submitted the declaration of Rabbi Block. And while Shabtay directs us to five exhibits attached to his request for judicial notice, this court denied the request because the attached exhibits were not before the trial court when it ruled on the motion to strike.

Fourth, although Shabtay's brief contains citations to legal authorities, he fails to apply those authorities to the facts in this case in any coherent manner. By way of example, Shabtay faults the court for relying on four cases out of "more than 4,000 cases in the annotated code interpreting [section] 425.16 several hundred of which specifically deal with the question of what constituted a public interest for the purpose of the statute. … An order that implicitly or explicitly rests on an erroneous reading of the law necessarily is an abuse of discretion. (W*illiams v. Superior Court* (2017) 3 Cal.5th 531, 540.)" But *Williams* involves the review of a *discovery* order in a representative action for wage and hour violations, not the review of an anti-SLAPP order in a tort case. (*Id.* at pp. 537–538.) And Shabtay provides no legal analysis to support his contention that "deriving the decision in this case from 4 tangentially relevant cases amounts to such an erroneous reading of the law; no such methodology is authorized."

When an opening brief fails to make appropriate references to the record in connection with points urged on appeal, or fails to develop those points with adequate legal analysis, the appellate court may treat those points as having been forfeited. (See *Regents of University of California v. Sheily* (2004) 122 Cal.App.4th 824, 826, fn. 1 ["[u]pon the party's failure" to comply with rule 8.204 "the appellate court need not consider or may disregard the matter"]; *Landry v. Berryessa Union School Dist.*

(1995) 39 Cal.App.4th 691, 699–700 [issue that is not supported by pertinent or cognizable legal argument may be deemed abandoned].) We recognize that Shabtay is not an attorney. But he is held to the same standards that apply to attorneys. (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543.) To do otherwise and treat Shabtay more leniently because he is representing himself "would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984–985.)

By failing to comply with fundamental principles of appellate practice and procedure, Shabtay has forfeited his claims on appeal. (See *Okorie v. Los Angeles Unified School Dist.* (2017) 14 Cal.App.5th 574, 599–600.)

DISPOSITION

The order is affirmed. Alon Elias shall recover his costs on appeal.

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LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

HANASONO, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.